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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

PATRICIA O'CONNOR and	:	Case No. 2:16-cv-05177-JLL-JAD
MEGAN O'CONNOR,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	Newark, New Jersey
	:	Wednesday, August 8, 2018
THE DODGE COMPANY, INC.,	:	12:02 p.m.
et al.	:	
	:	
Defendants.	:	

TRANSCRIPT OF STATUS CONFERENCE  
BEFORE THE HONORABLE JOSEPH A. DICKSON  
UNITED STATES MAGISTRATE JUDGE

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I N D E X

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Colloquy

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1 (Conference commenced at 12:02 p.m.)

2 THE COURT: All right. We're on the record on  
3 O'Connor versus Dodge, Docket Number 16-5177.

4 May I have appearances, please?

5 MR. WARNER: Good, I believe it's afternoon at this  
6 point, Your Honor. Eric J. Warner here from the Law Office of  
7 Eric J. Warner, LLC, co-counsel for the O'Connors.

8 THE COURT: Okay.

9 MR. DE LA GARZA: Your Honor, I'm Leland de la Garza  
10 and I'm with Hallett and Perrin, and I'm counsel with Brooke  
11 Haley.

12 THE COURT: Okay.

13 MS. WEISSLITZ: Good afternoon, Your Honor. Emily  
14 Weisslitz of McGivney Kluger and Cook on behalf of defendant,  
15 The Dodge Company.

16 THE COURT: Okay.

17 MR. DINO: Good afternoon. David Dino from Harris  
18 Beach on behalf of defendant Hydrol.

19 THE COURT: Okay. So, this is a discovery dispute  
20 here. And have you been able to resolve anything since I got  
21 papers in on this?

22 MR. DE LA GARZA: No, Your Honor.

23 MR. WARNER: Well, I -- Your Honor, certainly I have  
24 been speaking with Ms. Weisslitz' firm, McGivney and Kluger  
25 and Cook. She represents The Dodge Company. She asked for

1 six additional weeks for document production and we have no  
2 issue with that.

3 We -- we -- my -- my client is do -- her health is  
4 very poor. It's unlikely, but we may have to do a *de bene*  
5 *esse* deposition. She now has some sort of necrosis as a  
6 resultant -- a result in some -- from the treatment that she  
7 received. I only found this out yesterday, so the medical  
8 term -- I don't have the -- what the medical terminology  
9 necessarily memorized just yet, but my client is not doing  
10 very well and so I -- however, we -- if we a -- have another  
11 four weeks that we can amass what Your Honor can imagine are  
12 the voluminous medical records stemming not only from  
13 (indiscernible) but also now from this additional illness, we  
14 -- we'd appreciate it.

15 So, that kind -- but otherwise, I think -- I think  
16 Ms. Weisslitz and I agreed on that with respect to her need  
17 for six weeks and my need for at least four weeks to gather  
18 together, you know, medical records and see how my client's  
19 health progresses.

20 THE COURT: All right. So, let me make sure I  
21 understand what's going on. You're still gathering medical  
22 records --

23 MR. WARNER: Yes, Your Honor.

24 THE COURT: -- and you want an additional four  
25 weeks. From what, I don't know. I don't remember what all

1 our dates are, but whatever.

2 And you're looking for six weeks from now?

3 MS. WEISSLITZ: From today, yeah.

4 THE COURT: To complete your document production?

5 MS. WEISSLITZ: Yes. Your Honor, --

6 THE COURT: And you're ask -- just so I understand  
7 something, because we were talking about this. Plaintiffs'  
8 first set of document demands to all named defendants, that's  
9 what you're responding to?

10 MS. WEISSLITZ: Correct.

11 THE COURT: So, you're not really part of the fight  
12 today.

13 MS. WEISSLITZ: Correct.

14 THE COURT: Okay. And you just need six more weeks?

15 MS. WEISSLITZ: Yeah. It's my client -- I think  
16 everyone will concede that my client is the heavy in this  
17 case. There's almost 40 products that have been identified by  
18 plaintiff that were manufactured by my client and plaintiff is  
19 asking for materials that date back to the early '90s, so it's  
20 just a matter of getting all of these materials, so my client  
21 just needs a little bit more time to get those materials  
22 together.

23 We have not lodged the same objections that my co-  
24 defendants have lodged. We just need additional time, plus my  
25 client, they recently switched over to a new Website, so for

1 the materials that plaintiff is quest -- requesting relative  
2 to pictures of the product bottles and warning labels, we just  
3 need additional time to get those to plaintiff.

4 THE COURT: Well, that raises an interesting  
5 proposition in my mind. If the heavy -- using your words --

6 MS. WEISSLITZ: Yeah.

7 THE COURT: -- is going to produce the documents  
8 that you're objecting to from her client, what does that do to  
9 your objections? First of all, will these documents -- and  
10 this may be a question for you -- obviate the need to get the  
11 same documents or similar type documents from the other co-  
12 defendants?

13 MR. WARNER: Well, no, Your Honor. They all  
14 manufacture different products. It -- you know, it's -- it  
15 would be like saying that, you know, documents from Ford will  
16 suffice for Chevy.

17 THE COURT: Well, because I was under the  
18 understanding that -- well, this is the problem I'm having.

19 MR. WARNER: Okay.

20 THE COURT: Because you had one document demand to  
21 all the defendants.

22 MR. WARNER: Mm-hmm.

23 THE COURT: For instance, Ms. Haley -- is that who  
24 I'm talking to?

25 MS. HALEY: I am Ms. Haley, yes.

1 THE COURT: Yeah, I know who you are, but I mean who  
2 -- one of the two of you from Pierce Chemicals, --

3 MS. HALEY: (Indiscernible)

4 THE COURT: -- are the -- are there 30 identified  
5 products, chemicals?

6 MR. WARNER: So -- right. So, in -- I -- the exact  
7 number in the complaint, I can't -- I can't give a precise --  
8 that sounds right, though, Your Honor.

9 THE COURT: All right. For purposes of today's  
10 argument, let's say 40.

11 MR. WARNER: That sounds right.

12 THE COURT: Yeah, but not -- not -- if there are 38,  
13 then I am not adding to them. If there are 47, I'm not taking  
14 away. But we're -- for purposes of today's argument, there  
15 are 40. You asked for the information on all 40 from all of  
16 the defendants; right?

17 MR. WARNER: Well, yes, because, for example, the  
18 heavy has I'd say 30 chemicals and -- or 30 products and the --  
19 and the rest -- the other three have -- I believe one or two  
20 of them only have three or four products. But, you know,  
21 basically, we -- basically, Your Honor, what we need to know  
22 is do they contain formaldehyde, were there warnings about  
23 formaldehyde, when did the manufacturers first learn about the  
24 hazards of formaldehyde, did they put any mark -- did they put  
25 any warnings about formaldehyde in their marketing materials.



## Colloquy

9

1 See, these are all manufacturer, distributor, independent --

2 THE COURT: Well, did they object to those -- I  
3 don't think they objected to those.

4 MR. WARNER: I thought they did.

5 MR. DE LA GARZA: Your Honor, I am representing  
6 Pierce, along with Ms. Haley.

7 And so the complaint against Pierce is that Pierce  
8 has one product, Powertone --

9 THE COURT: Right, I see that.

10 MR. DE LA GARZA: -- (36 Index) --

11 THE COURT: And my clerk is reminding me.

12 MR. DE LA GARZA: Okay. So, for -- as we understand  
13 it, the only complaint against Pierce is that one product, yet  
14 one of the reasons that we're objecting to the discovery is  
15 that Pierce does manufacture other products, not products that  
16 plaintiff has alleged caused this leukemia. And so, for  
17 documents related to all those other products, then we're  
18 objecting, --

19 THE COURT: All right.

20 MR. DE LA GARZA: -- because it has nothing to do  
21 with the case.

22 THE COURT: Are you looking for products that are  
23 not identified in your complaint?

24 MR. WARNER: Well, --

25 THE COURT: For inform -- for discovery on products?

## Colloquy

10

1 Is it the same for --

2 MR. DINO: Yes, for --

3 THE COURT: -- your client is also one; right?

4 MR. DINO: For Hydrol we have one. We're in the  
5 same position as --

6 THE COURT: Right. Okay.

7 MR. WARNER: Well, we respectfully, Your Honor, so  
8 it's the -- so far -- as far as we can tell from our initial  
9 pleading, it looks like there has been they only have one  
10 product each, but we're -- we're reluctant to take our  
11 adversaries' word for that all products that -- that we know  
12 my client used during her career, that none of other -- none  
13 of the other ones that we've identified contain formaldehyde  
14 or none of the other ones that -- you know, for example, my  
15 recollection of the jurisdictional discovery deposition was  
16 that, I mean, in some instances she used -- and I could be  
17 wrong and I'm sure I'll be corrected -- but that she used  
18 Hydrol products and Pierce products, some of them which may be  
19 not have been specifically identified. We're -- we're just a  
20 little reluctant to accept our adversaries' word for it --

21 THE COURT: Well, how do we identify those products?  
22 She worked for -- who did she work for?

23 MR. WARNER: So, she worked for -- it was a funeral  
24 home --

25 THE COURT: It's not a defendant here today.

Colloquy

11

1 MR. WARNER: I'm sorry?

2 THE COURT: It's --

3 MR. WARNER: Yeah. Correct. It would -- right.

4 Because of workers' compensation.

5 THE COURT: And they basically gave her the products  
6 to use in her job.

7 MR. WARNER: Yes. Yes, Your Honor.

8 THE COURT: So, to identify what products she  
9 touched, do you have to go through the defendant -- not the  
10 defendant -- the employer's records?

11 MR. WARNER: No, --

12 THE COURT: Isn't that how we find -- isn't that how  
13 we discover them?

14 MR. WARNER: We -- it -- we -- correct, Your Honor.  
15 We -- we -- we have -- and, of course, --

16 THE COURT: And if their records don't reflect  
17 anything other than the one product you've identified from  
18 Pierce and Hydrol, then tell me why I should allow you to get  
19 information on all the other myriad of products that they  
20 manufacturer, which we have --

21 MR. WARNER: I --

22 THE COURT: -- we have no indication were in this  
23 case.

24 MR. WARNER: Well, Your Honor, I just -- I don't see  
25 any harm if -- if they -- if they do manufacture other

1 formaldehyde-containing products, I don't see any harm why  
2 sending how their --

3 THE COURT: Well, it could be -- because you've  
4 asked for 9 -- going back to 1990.

5 MR. WARNER: Exactly. Right.

6 THE COURT: That's a lot of information.

7 MR. WARNER: At -- at -- well, at this rate, I'm --  
8 I'm -- I'm sure that if -- if they -- if there are, you know,  
9 material safety data sheets that say that certain chemicals  
10 and certain products do contain formaldehyde, we -- we'd like  
11 to -- we'd simply like to know about it.

12 THE COURT: Well, why? Because they may have --  
13 they -- I'm not saying they did, but they may have  
14 manufactured 100 products that contained formaldehyde, none of  
15 which found their way to your client's employer or your  
16 client.

17 MR. WARNER: Well, I -- for -- that's true, Your  
18 Honor, and I think -- I think that -- I think the basis behind  
19 this is what we don't believe they did. I think that they --  
20 they manufactured -- and -- and -- and, again, I'll be  
21 corrected if I'm wrong -- it wouldn't -- it wouldn't have been  
22 100 product -- different products, but -- you know, I -- I --  
23 I think that -- you know and generally, though -- and, of  
24 course records going back to the '90s with -- were written  
25 records and everything to that effect and there may --

1 THE COURT: That's going to be a lot of work.  
2 Depending on -- let's -- let me give -- take you off the hot  
3 seat for a minute.

4 Mr. de la Garza, how many product -- do we know how  
5 many products containing formaldehyde your client manufactured  
6 going back to 1990?

7 MR. DE LA GARZA: Well, our product -- our client  
8 manufactured a bunch of products. I can't tell you 30, 40,  
9 but many products that contained formaldehyde, because  
10 formaldehyde is a primary ingredient of embalming-related  
11 products. So, you have different embalming products for  
12 different uses.

13 And so this one particular one that is at issue with  
14 regard to Pierce is the one that was alleged to have been used  
15 by this plaintiff. You kind of have to go back to the  
16 original complaint. The original complaint wasn't all that  
17 clear about the products. And so we filed the motion to  
18 dismiss. The Court granted the motion to dismiss, ordered  
19 repleading, there was repleading, and so now you have a  
20 complaint that is very specific about what comp -- what  
21 products were used.

22 For example, on page 7 of the complaint, the amended  
23 complaint, beginning at paragraph 22, there is a discussion of  
24 the specific product. So we went from maybe some broader ill-  
25 defined products to the specific product that was used.

1           So now, the way this case is framed, the plaintiff  
2 has pled which specific products were used, not just against  
3 Pierce, but against the other defendants, as well. For  
4 example, with regard to Dodge, in paragraph 7 there's a long  
5 list of the products that it -- that are alleged to have been  
6 purchased by the plaintiff's employer and which she used, and  
7 those are the products that are at issue.

8           So now we have a complaint that frames it very  
9 specifically, so the issue that I think each of these  
10 defendants has is when you asked for us to produce a lot of  
11 documents related to other products that you haven't raised as  
12 being used and causing the leukemia and you're -- now you're  
13 delving into something that is not relevant and it -- the --  
14 you know, it's not proportional to the needs of this case.  
15 That's why we are objecting to that portion.

16           THE COURT: I understand.

17           Mr. Warner, I tend to agree.

18           MR. WARNER: Oh, look, I -- I -- you know, I think --  
19 I think probably where this -- you know, I think where --  
20 where we went into the weeds here, too, is that we were  
21 fighting over the language "any and all." As long as we -- I  
22 -- I -- I -- if they don't want to give us information  
23 regarding products that we have not yet been able to identify  
24 that she has used, I -- I don't think that that's terribly,  
25 again, going to be the end of the world for us.

1           Basically, however, but with respect to the products  
2 that we have identified that she has used -- and I just re-  
3 reviewed my notes here. I think that was probably the main --  
4 the primary issue here was that we would like to have  
5 documents regarding those products. And since the non-heavies  
6 here have -- I -- and I believe they've represented they only  
7 have one product each -- you know, as long as they can produce  
8 all -- any and all documents regarding those, we -- we have to  
9 know about the material safety data sheets, we know -- need to  
10 know about warning labels, we need to know about advertising  
11 materials, we need to know when they first learned about  
12 formaldehyde as -- as hazardous.

13           So -- and -- and that -- and that's fair. I mean,  
14 that -- I -- you know, I -- I think that I don't see any  
15 reason why we wouldn't be able to obtain that.

16           THE COURT: And do you object to providing those  
17 types of materials with respect to the one product that has  
18 been identified for your client?

19           MR. DE LA GARZA: No, Your Honor. For example, we --  
20 we've always maintained that the material data safety sheets  
21 are the best way for the plaintiff and their counsel to know  
22 what was in these products, because it discloses that, as  
23 required by federal law. And counsel was referring to any and  
24 all documents, you know, if -- in the beginning, when we  
25 conferred, we did have a conference and tried to talk to these

1 issues and we had a discussion about both sides using the  
2 beginning of their request saying "any and all documents  
3 referring to." All right? So, we kind of got past that,  
4 because we --

5 THE COURT: Okay.

6 MR. DE LA GARZA: -- we both did it. A good point.  
7 So, if we're both doing it, we're not going to be complaining  
8 about it. And so that's not an issue. That whole "any and  
9 all" is not an issue.

10 What's an issue is, for example -- and I would break  
11 this down into three categories. And our letter lays it out  
12 in three categories.

13 First, there is a request for documents that relate  
14 to conditions or products not in dispute. So, products not in  
15 dispute, we've been talking about that. And so for conditions  
16 not in dispute. Well, the condition here is she says that she  
17 contracted cancer, specifically leukemia, as a result of the  
18 use of the product.

19 So, for example, if there is a request for documents  
20 related to conditions other than that -- for example, skin  
21 irritations, there could be other conditions that might be  
22 caused by using these products -- that we shouldn't have to  
23 produce documents related to that, because that's not what's  
24 at issue.

25 What the plaintiff is trying to prove is that the



1 formaldehyde in the defendants' products caused her to suffer  
2 from leukemia. That's the only claim at issue. And so, as  
3 we've identified them in our letter -- on page 2 of our  
4 letter, we've identified specific document requests 1, 2, 3  
5 for Pierce. For Hydrol it would be 21 and 32. And that's on  
6 page 2 of our letter to the Court.

7 THE COURT: Mm-hmm.

8 MR. DE LA GARZA: And so we're saying with respect  
9 to those we shouldn't have to answer for irrelevant product  
10 defects or irrelevant defective conditions or irrelevant  
11 illnesses, because that's not what's raised by the pleadings.

12 We have another category which is --

13 THE COURT: Okay. Let me -- let's stop there for a  
14 minute.

15 MR. DE LA GARZA: Okay.

16 THE COURT: The products we've kind of dealt with.  
17 I'm saying that I agree with you. And unless I'm just missing  
18 your point right now, you mean products other than the one  
19 identified.

20 MR. DE LA GARZA: Correct.

21 THE COURT: And I agree with that and you've --

22 MR. WARNER: I -- I -- I --

23 THE COURT: And you're ready to give that up without  
24 prejudice for now.

25 MR. WARNER: Without prej -- well, Your Honor, but I

1 think what my adversary is saying, too, he feels that even for  
2 this single product, if there's a skin irritation --

3 THE COURT: No, no, I know. I'm going to get there  
4 now. That's --

5 MR. WARNER: And -- and --

6 THE COURT: I got that. So, what do you -- what do  
7 you say to that?

8 MR. WARNER: I mean, I -- you know, I -- I -- I do --  
9 we -- I -- I think that it's possible that, you know, -- and,  
10 of course, you never want to say it's possible in a federal  
11 courtroom, but nevertheless, what we're talking about is over  
12 decades here where we didn't have data -- data keeping as well  
13 as we do now.

14 For -- for -- let me start it this way. Material  
15 safety data sheets, the -- the -- the law -- the lit -- the  
16 item -- the documents that tell you exactly the hazards of the  
17 chemicals, how to use them, what to wear, they have changed  
18 significant -- they change about two years, as far as I could  
19 tell. They -- they -- they've changed constantly. So, I -- I  
20 mean, basically, we're looking for all those material safety  
21 data sheets and, you know, a lot of those material safety data  
22 sheets --

23 For example, let's say one -- let's say one product  
24 may have a material safety data sheet that says, you know,  
25 formaldehyde, that it contains formaldehyde, known to cause

1 cancer to humans, those are in or about 1993. I think that  
2 was when the FDA first started to recognize -- or -- or at  
3 least that's when the FDA start -- first started to recognize  
4 that it caused cancer in -- in lab rats. But then, you know,  
5 another -- a similar material safety data sheet that for a  
6 formaldehyde product from around that time may not have that  
7 information in that and I think that would be useful  
8 information.

9 I just I don't -- I don't see the harm necessarily  
10 in being -- providing the -- these documents for all  
11 formaldehyde-containing products. That's --

12 THE COURT: I'm just -- you lost me slightly. I  
13 thought --

14 MR. WARNER: Okay. Sure, sure, sure.

15 THE COURT: I want to make sure I say this correctly.  
16 Data material or material data? What --

17 MR. WARNER: The material safety data sheets.

18 THE COURT: Material safety data sheets.

19 MR. WARNER: Correct, correct, correct.

20 THE COURT: He's -- he wants to give you those;  
21 correct?

22 MR. DE LA GARZA: Correct.

23 THE COURT: And that's good.

24 MR. WARNER: Yeah.

25 THE COURT: So, what else do you need aside from

1 those --

2 MR. WARNER: Sure. Well, okay, but --

3 THE COURT: -- to -- there's -- there's another  
4 issue which you didn't quite address and that's hooking up --  
5 let's use the general term skin rash that -- that perhaps the  
6 product they -- perhaps they have data as to whether their  
7 product causes or could cause skin rash. Are you looking for  
8 that and why wouldn't that be in the material data safety  
9 sheet?

10 MR. WARNER: Okay. Well, certainly, it would be --

11 THE COURT: Material safety data sheet.

12 MR. WARNER: That -- that -- that is the type of  
13 information --

14 MS. HALEY: MSDS is usually how --

15 MR. WARNER: Right. That --

16 MS. HALEY: -- they refer to is.

17 THE COURT: Say that again?

18 MS. HALEY: MSDS.

19 MR. WARNER: Right. That -- that is the type of  
20 information that would be in a material safety data sheet.  
21 Leukemia --

22 THE COURT: So if you get that, you should have what  
23 you're looking for.

24 MR. WARNER: Well, yes and no. So -- so --

25 THE COURT: Well, let me hear -- just let me -- let

1 me -- it's yes and the no is maybe the old ones didn't have  
2 everything. Right?

3 MR. WARNER: Boy, I -- may I -- I think I -- may --  
4 may I --

5 THE COURT: Sure, sure.

6 MR. WARNER: -- may I -- let me -- let me -- let me  
7 try and frame this.

8 THE COURT: Okay.

9 MR. WARNER: Leukemia has a lot of symptoms. Right?  
10 Like right now, for example, my client has necrosis. We're  
11 not even -- we just found out yesterday. We're not even sure  
12 where it is. Some sort of necrosis, some sort of tissue  
13 disorder. Her -- her skin -- her -- or it's either her skin  
14 or part of her body is dying. Cells are just dying.

15 Leukemia is a disease of many symptoms. If, for  
16 example, one says skin rash, well, and it said that in 1990,  
17 you know, or if it said that in 2000, but it didn't say  
18 leukemia, we might want to know that.

19 Warning labels, too. You know, maybe one --

20 THE COURT: Wait, wait. Stop with the -- don't do  
21 the warning labels.

22 MR. WARNER: Okay. Okay. Okay. Sure, sure, sure.

23 THE COURT: I want to stick with this and tell me  
24 why the --

25 MR. WARNER: Sure. Mm-hmm.

1 THE COURT: -- MSDS are not enough to let you  
2 understand what the other symptoms might be. I mean, you're  
3 going to have to have a doctor look at this, too.

4 MR. WARNER: Of course. Of course.

5 THE COURT: So, isn't this a place to start?

6 MR. WARNER: What, is -- is Your Honor suggesting  
7 that we only would receive the MSDSes from -- from adverse  
8 counsel and --

9 THE COURT: Well, what's the next category of  
10 documents that you want?

11 MR. WARNER: Warning labels on the products where --  
12 where the end user can see --

13 THE COURT: Why shouldn't they get warning labels?

14 MR. DE LA GARZA: Your Honor, can I ask a question?  
15 Just for clarification. Is counsel talking about the MSDSes  
16 for all products or just the one in --

17 THE COURT: We're talking about the one product.

18 MR. DE LA GARZA: Okay. Because I had thought that  
19 he had ventured onto all products.

20 THE COURT: No, we're not going to all products.  
21 We're talking about the one product.

22 MR. WARNER: Well, a warning label is the heart of  
23 any --

24 THE COURT: No, no, no. MSDS. One product.

25 Warning labels -- well, why not warning labels?

1 MR. DE LA GARZA: Pierce has no problem with  
2 producing, to the extent that we have them, warning labels  
3 that were on the products. So, all we're talking about is a  
4 label that's slapped on the -- the plastic container. I am  
5 not speaking for other --

6 MR. DINO: Same for Hydrol.

7 MR. DE LA GARZA: -- defense counsel.

8 THE COURT: Okay.

9 MR. WARNER: And oftentimes it's actually just  
10 printed right on the bottle, but yeah, but warning labels, for  
11 example, --

12 THE COURT: Okay. So, warning label. What's the  
13 next category of documents you want?

14 MR. WARNER: Sure. Marketing materials. For  
15 example, they -- within -- you know, for -- I believe it was  
16 in --

17 THE COURT: Marketing -- let's go to marketing  
18 materials.

19 MR. DE LA GARZA: There is no issue in this case  
20 that turns on the marketing materials. So, if we produce the  
21 material safety data sheets, we're showing what's in the  
22 product. We produce to you warning labels, we're produce --  
23 we're showing you what we've disclosed to the user could be  
24 the risk associated with using this product.

25 So, marketing materials is a broad request for

1 documents that extends to how that product is marketed in  
2 different states and -- and also, I believe this would be  
3 request number 3. Request number 3 is for relating to all  
4 defective conditions that existed or you thought exists in any  
5 of your embalming products.

6 Now, we've already got past the "any," so we're just  
7 talking about all defective conditions. The problem with the  
8 marketing materials simply is the way that it's been requested  
9 is over broad and then also there is simply no cause of action  
10 that turns on those marketing materials.

11 MR. WARNER: Well, Your Honor, so at her deposition  
12 my client did testify that there were catalogs that she  
13 reviewed that were kept at the funeral home, that she believed  
14 there was a whole drawer of them. You know, gee whiz, maybe  
15 if one of the catalogs had said warning formaldehyde, she  
16 wouldn't -- she wouldn't -- have gotten cancer.

17 THE COURT: Well, the way you're -- okay. The --  
18 and I understand the argument. And the way you're arguing --  
19 let's -- when I back and read number 3 and then I hear  
20 counsel's argument and I hear what you're saying, I do think  
21 that there's room here for you to narrow the request. If you  
22 ask for catalogs, I'd likely -- I think they'll produce those.

23 MR. WARNER: Well, and -- and the other --

24 THE COURT: Either with my encouragement or not.

25 MR. WARNER: And -- and, Your Honor, may -- may I?



1 This -- this is -- this is, like, a big industry. These --  
2 these -- these people --

3 THE COURT: But here's my problem.

4 MR. WARNER: Okay.

5 THE COURT: And I don't mean to -- I don't want  
6 anybody to get nervous that I said the word "problem."

7 I think we need a little more meet and confer. I  
8 understand you did meet and confer and I under -- because you  
9 told me you did, but you need to narrow that down.

10 So, I don't want to sit here for the next 20 minutes  
11 and go through everything you would want under 3. Catalogs, I  
12 think is an easy one. But I want you to go back and think  
13 about it and talk to counsel.

14 And I actually see another reason why some of these  
15 marketing materials -- he hasn't articulated it here yet, but  
16 I am not going to do his job for him and I may be even wrong,  
17 so -- so, I'm not -- that's why -- but I think there are some  
18 marketing materials that might be relevant to this case under  
19 the what we have left in the -- pled in the case.

20 But I do agree that this is very, very broad, so we  
21 need to go back to that one. All right?

22 MR. WARNER: Okay.

23 THE COURT: And work a little bit.

24 MR. WARNER: Okay. And I -- respectfully, I -- and  
25 I'm -- I'm not very optimistic about meet and confer. I mean,

1 if -- if Your Honor will recall, the last telephone conference  
2 Your Honor asked for --

3 THE COURT: I assume -- well, you need to be more  
4 positive about meet and confers. That's number one.

5 Number two. Four attorneys here doing their jobs.  
6 They just heard what I said. I don't think they're going to  
7 call me back in two weeks and say they've agreed to nothing  
8 but catalogs. I think there's probably other types of  
9 documents, but you need to specify which ones and why. I  
10 mean, any and all defective conditions, again, you've kind of  
11 put that to the side for a minute.

12 MR. WARNER: Okay.

13 THE COURT: We're talking about this disease. The  
14 MSDSes I think is a really great -- I don't know how many  
15 there are going to be and how -- you know, I don't think  
16 that's a lot; right? You've got one product and you have one  
17 per year. Or do they come out more than once a year?

18 MR. DE LA GARZA: They're not one per year, but we  
19 would have multiple iterations.

20 THE COURT: But how many?

21 MR. DE LA GARZA: I -- I don't know, Your Honor.

22 THE COURT: A hundred?

23 MR. DE LA GARZA: Oh, no, no, no.

24 MS. WEISLITZ: No, it's every two to five years.

25 THE COURT: Yeah, so that's -- it's not -- this is

1 not a burden.

2 MR. WARNER: Well, --

3 THE COURT: So, let's start there at least.

4 MR. WARNER: And --

5 THE COURT: Catalogs I agree with. But I don't want  
6 to get involved in every little piece of document.

7 MR. WARNER: Of course.

8 THE COURT: That's not my job to do that.

9 MR. WARNER: I -- I -- I understand and I just -- I  
10 just wanted to add that, you know, manufacturers will -- will  
11 -- will issue different MSDSes for Canada and the EU and it  
12 would be interesting to see if, for example, in the EU they're  
13 saying, oh, it contains formaldehyde, but in the U.S. they  
14 don't. So, I mean, that's the -- but we'll -- we'll -- I  
15 guess we'll meet and confer and hopefully we'll come to a  
16 resolution soon.

17 THE COURT: Well, I just found out my heart -- blood  
18 pressure medication, depending in who manufactures it,  
19 contains something that will kill me.

20 MR. WARNER: I hear that, too, Your Honor. It's --  
21 I wasn't -- I wasn't -- I was -- I don't -- I take a different  
22 one. I take Benicar and that's not --

23 THE COURT: It turned out that I'm okay. Thank you  
24 very much.

25 MR. WARNER: Yes.

1 MR. DE LA GARZA: Your Honor, we actually did have a  
2 conference, but not with this counsel. We had it with Mr.  
3 Tandy. And when we had that conference with Mr. Tandy, it was  
4 pretty short, because Mr. Tandy basically said he wasn't going  
5 to change his position. He said he would send us a letter  
6 laying out his position with regards to our discovery and we  
7 haven't gotten that. So, we have another discovery dispute  
8 that's brewing, but, you know, we're -- we're trying to follow  
9 the orders of the Court, which is don't bring a problem to you  
10 until we've met and conferred.

11 THE COURT: I understand.

12 MR. DE LA GARZA: And so we haven't finished that  
13 process yet, but, you know, all of our side dedicated time to  
14 have the phone conference with Mr. Tandy. If we now have a  
15 conference with this counsel and/or Mr. Tandy, you know,  
16 especially guided by your instructions to confer, it probably  
17 is going to be productive.

18 THE COURT: And -- well, and always remember, meet  
19 and confer, we should -- if I get a chance to write an opinion  
20 on this that hopefully changes the rule somewhere, it should  
21 say meet and compromise. Okay?

22 And there are no -- there's always -- I've been on  
23 the job for eight years here and there is always room for  
24 compromise. I -- maybe there's -- maybe there's those one or  
25 two cases where somebody has been completely unreasonable, but

1 generally there's room for compromise.

2 All right. So, what is the next --

3 MR. WARNER: Well, I mean, I -- I think the only  
4 other next thing is that I think that my adversary -- well,  
5 for example, was Pierce -- one -- one of my adversaries -- the  
6 one complaining about "any and all" uses "any and all" in  
7 their own documents, so I guess --

8 THE COURT: I thought you worked that out, though.

9 MR. WARNER: I'm -- we're going to work it out?

10 THE COURT: I thought he said it was worked it.

11 MR. WARNER: Well, I -- I didn't -- I thought he --

12 MR. DE LA GARZA: The way it got worked out was,  
13 once counsel, Mr. Tandy, pointed out that some of our requests  
14 said any and all, then we no longer objected to that. So,  
15 when we sent a letter to Mr. Tandy laying out what our issues  
16 with his discovery were, we raised that with him. But when we  
17 sent a letter to the Court laying out what our issues are, we  
18 didn't raise that issue. When we responded with our responses  
19 and objections, we did not make those objections. And because  
20 our view was, you're right, if we used the words "any and all"  
21 in this discovery and you used the words, we don't have a  
22 basis for complaining about it.

23 The next go around, maybe we would be more careful  
24 with how we actually do our discovery. That's just not an  
25 issue here.

1           So, the next issue really is, in our -- in our  
2 second grouping, that the plaintiff is seeking access to our  
3 formula for our product. Marketing materials, you know, we  
4 need -- we kind of already talked about that. We're going to  
5 have to discuss that further. Testing, inspection results,  
6 some sort of very broadly defined sales materials. So now you  
7 have marketing and sales, probably we'll talk about that.

8           So, I think what we're really talking about is they  
9 want -- they want our formula for the product. They want  
10 inspections and testing results. And not necessarily  
11 constrained to whether or not, for example, if you tested the  
12 product and it showed that it can cause cancer. Or you  
13 inspected the product and if -- and it was too much, therefore  
14 it would cause cancer. So, we'll start with that.

15           Start with the formula. I mean, that one right  
16 there, you don't need the formula in order to now that the  
17 product has formaldehyde. Nobody contests that the products  
18 that are at issue have formaldehyde. Am I speaking out of  
19 turn?

20           MS. WEISSLITZ: No.

21           MR. DINO: No.

22           MR. DE LA GARZA: And so, if we don't contest that  
23 and the plaintiff has alleged that, and their claim is it's a  
24 simple syllogism, it can -- it's your product, it contains  
25 formaldehyde, and I had access and used it and I got sick.

1 And that's the syllogy.

2 So -- and -- and so -- and they don't need the  
3 formula to know, for example, if we put particular dyes into  
4 it in order to make the skin look rosier. They don't need  
5 that information.

6 MR. WARNER: Your Honor, that's -- in re -- with  
7 respect to my counsel, it's a bit of a silly syllogy, because  
8 what I've learned is that there is synergy usually between  
9 these chemicals. So, for example, we flew in a toxicologist  
10 from Berkeley last time -- the last time we had a case like  
11 this and oftentimes formaldehyde, the -- the toxin -- toxic  
12 effect of it may increase when it's combined with another  
13 substance. Not being a toxicologist and not knowing the  
14 formula, we just don't know.

15 But so I -- I just (indiscernible chuckling while  
16 speaking) alliterations (indiscernible) you know, for -- as  
17 far as the syllogy goes, there's a synergy that has to be  
18 considered. And I think that, you know, if our toxicologist  
19 examines it, I think -- I think we'll be -- but -- but, you  
20 know, as far as -- as far as anything as a trade secret or  
21 something, I don't see where there couldn't be a  
22 confidentiality or something to that effect.

23 MR. DE LA GARZA: That's not a claim that's been  
24 alleged, that there has been any aggravation by other  
25 ingredients. The allegation is it contains formaldehyde,

1 formaldehyde makes you get cancer, and that's it.

2 MR. WARNER: Well, --

3 THE COURT: I understand, but there -- I am not

4 shocked --

5 Can we -- can you do me a favor? Can you push that  
6 microphone down it's, like, right between your eyes and my  
7 eyes. Thank you.

8 I am not -- I don't think it constitutes a fishing  
9 expedition to know the -- to know the formula so that their  
10 toxicologist can ultimate -- so that their toxicologist can be  
11 in a position one way or the other to determine whether the  
12 product that you sold to his client's employer was dangerous  
13 because it contained formaldehyde mixed with X.

14 That's the -- I understand that's not a specific  
15 allegation in the complaint, because I think probably because  
16 he could never make that allegation, because they don't have  
17 the formula and they only know it's formaldehyde. So, --

18 MS. WEISLITZ: Your Honor, if I may?

19 The MSDSes, as well as the labels, they contain all  
20 the chemicals in the products. The specific formula relative  
21 to the percentages, I would argue that that's proprietary and  
22 I would argue that plaintiffs' expert, through the document  
23 production, has everything they need to make the analysis that  
24 plaintiff is requesting.

25 THE COURT: Well, then maybe this is --



1 MR. WARNER: But --

2 THE COURT: Let's -- if your expert -- if you come  
3 back and make an argument that I find persuasive that you need  
4 the percentages, based on science that your expert will tell  
5 us why you need the percentages, then maybe I'll reconsider  
6 that. But why isn't that good enough?

7 MR. WARNER: Well, for example, so may -- maybe if  
8 they're willing to stip -- well, our last -- our last  
9 formaldehyde client smoked for -- for 20 or 30 years and  
10 everyone was -- everyone's hair was on fire, oh my god, he  
11 smoked for 20 or 30 years, there's a synergistic effect. It  
12 turns out that there are studies that if he had only smoked  
13 for ten years it wouldn't have been that bad of a deal, but  
14 now, since he smoked for 20 years, well -- well, you know, you  
15 -- you can forget about -- you know, that's comparative  
16 negligence right there.

17 So, percentages do matter. I mean, I -- you know, I  
18 was -- I've been down -- you know, I've done enough of these  
19 toxicolo -- tox -- toxic tort --

20 THE COURT: What you're saying sounds logical to me,  
21 but I don't think I have enough in front of me -- well, let's  
22 back up for a minute.

23 What harm -- what actual prejudice would you suffer  
24 by turning over the formula, assuming we have a discovery  
25 confidentiality order and it's -- and, you know, whoever can

1 view that formula, it's restricted to that and there's all  
2 kinds of protections, as we normally have in federal court?  
3 And we have them in patent cases and we have them in antitrust  
4 cases, we have them in class actions, so I'm sure that we can  
5 have one here. So, how are you prejudiced by turning over the  
6 formula?

7 MR. DE LA GARZA: Your Honor, if you were to provide  
8 all of the protection that you just said, then you probably  
9 have ameliorated almost all of those risks. You know, we  
10 wouldn't want, for example, to -- to be able to have our  
11 defense counsel see our formula and they wouldn't want us to  
12 see their formula.

13 THE COURT: Yeah, I -- I thought about that. That's  
14 the problem we have to deal with.

15 MR. DE LA GARZA: But I --

16 THE COURT: Because you're not going to be able to  
17 use their formu -- it's going to -- this could get very tricky  
18 and very dangerous -- but, I'm sorry, I interrupted you. Go  
19 ahead.

20 MR. DE LA GARZA: No, well, that -- that's the  
21 point, really, and -- and I think you were onto the right  
22 track, which is before we get into what is a sticky area,  
23 let's see if we need to be in a sticky area. Is there any  
24 proven reason why we need to get into this sticky area?

25 So, I would suggest to the Court that where you were

1 headed is the right way to go, which is we produce our  
2 material data safety sheets, that tells you what the  
3 ingredients are, he has an expert. If his expert can make a  
4 showing which he presents to the Court for why that's actually  
5 necessary, then the Court can entertain that request at that  
6 time. Then we can deal with all these complicated issues  
7 between us.

8 THE COURT: It's conceivable -- I'm not saying  
9 probable, I am not saying likely, it's conceivable that your  
10 toxicologist is going to look at the ingredients and say it  
11 doesn't -- none of these, under any science I know, have any  
12 effect of making it worse.

13 MR. WARNER: Have we even established that these are  
14 trade secrets? Are they? Are they?

15 THE COURT: I'm sure they're trade -- I --

16 MR. DE LA GARZA: It's not publicly disclosed  
17 information what --

18 THE COURT: If each one of these defendants --

19 MR. DE LA GARZA: -- percentages there are --

20 THE COURT: -- has a different formula for their  
21 embalming products, I think that's a trade secret. But if you  
22 really want to contest that, you are within -- I'll put the  
23 burden on them to tell me why it's a trade secret and then  
24 I'll -- but we're not there yet.

25 MR. WARNER: Okay.

1           THE COURT: We're not there. I think this is the  
2 way to go. Have your tox -- I assume you already have a  
3 toxicologist.

4           MR. WARNER: Yes, and --

5           THE COURT: Have your toxicologist look at the  
6 MSDSes and -- and if he -- and you make an argument to me -- I  
7 mean, first of all, you're going to talk to them.

8           But there is an issue, and I've faced it in this  
9 court before, now we have attorneys' eyes only, but I think  
10 you mean scientists. Maybe I'm wrong.

11          MR. WARNER: And we'll pay him another couple grand  
12 to look at them and look at it again -- look at it again, I  
13 guess.

14          THE COURT: Well, I don't know if you've got to pay  
15 him a couple of grand. I mean, it sounds like this -- it's a  
16 one page sheet or is it 50 page document?

17          MR. WARNER: Well -- well, if you go from -- from  
18 1990 when for she -- when she first started working and if we  
19 are allowed to get the ones from Canada and the EU, as well, I  
20 mean, we're -- we're talking about a lot of stuff, especially  
21 with Dodge.

22          THE COURT: Well, they're going to produce it, so  
23 you've got to review it, so I'm not --

24          MR. WARNER: Well, our toxicologist is going to be  
25 the one that's going to be looking at. I mean, that's --

1 THE COURT: But now -- I understand, but -- but this  
2 is a -- this is the case you chose.

3 MR. WARNER: Yeah, of course.

4 THE COURT: So, you have to --

5 MR. WARNER: I -- I just --

6 THE COURT: -- you have to go through it.

7 Now, so, where are we?

8 MR. DE LA GARZA: So, we have talked about formula,  
9 Your Honor. The next related are -- requests are they're  
10 requesting documents that refer to the processes involved in  
11 the production of the products, the tests that anyone  
12 performed on the products, not limited to any particular kind  
13 of test, particular purpose, and documents referring to any  
14 inspections anybody ever performed on the products not related  
15 necessarily to this particular condition that's at issue, --

16 THE COURT: You're going to narrow all that down;  
17 right?

18 MR. WARNER: Well, Your Honor, I mean, I think  
19 testing of these products -- it goes toward when they first  
20 learned formaldehyde was --

21 THE COURT: Oh, I think I am going to give you  
22 inspections and testing results, but the question is which  
23 testing and which inspections. You're talking about anything  
24 that's got the word -- and I'm being simplistic here, I'm not  
25 locking you into this -- but we're talking about things that

1 result in cancer or leukemia.

2 MR. WARNER: I -- I -- Your Honor, I -- I thought  
3 that was implied, but I guess it's not, so that's why we're  
4 here. I thought for -- I -- with respect, I thought it was  
5 implied. I mean, it -- if they wanted to answer under  
6 objection saying over broad, we're not going to give you stuff  
7 that's a test about the air quality and the -- and, you know,  
8 or -- well, that might actually be (indiscernible) -- but a  
9 test about the acidity level or something or -- you know, then  
10 that's fine, then -- then at least we can do that, but I -- I  
11 mean, I thought this was implied.

12 THE COURT: All right. Well, apparently it wasn't,  
13 so --

14 MR. WARNER: I -- I don't see --

15 MR. DE LA GARZA: Well, the --

16 THE COURT: Do you still object once we've narrowed  
17 it down?

18 MR. DE LA GARZA: Well, what I would -- I would say  
19 we have to figure out how to narrow that down in order to make  
20 that relevant. So, for example, my client -- when I talked to  
21 my client about, well, what kind of testing or inspection  
22 might you do?

23 THE COURT: Mm-hmm.

24 MR. DE LA GARZA: And it's a chemical production  
25 process.

## Colloquy

39

1 THE COURT: Mm-hmm.

2 MR. DE LA GARZA: So, the ultimate test is when you  
3 get it out at, you know, at the end of the, in effect, the  
4 assembly line, then you look at what you've got to see if it  
5 has the right percentages, in terms of --

6 THE COURT: Does it work?

7 MR. DE LA GARZA: -- of the chemicals. And then  
8 does it have the right look, does it have the right smell.  
9 Whatever all those things are that they're testing. That's  
10 what they're doing. Those are more of the appearances, the  
11 composition, as opposed to something that would relate to --

12 THE COURT: The efficacy of the product.

13 MR. DE LA GARZA: Yeah.

14 MR. WARNER: And -- and if they're to --

15 MR. DE LA GARZA: As opposed to the whether or not --

16 THE COURT: Whether it causes cancer.

17 MR. DE LA GARZA: -- it would cause cancer. So, if  
18 you were to say, --

19 THE COURT: Well, --

20 MR. DE LA GARZA: -- you know, a test for the color,  
21 nothing to do with this lawsuit.

22 THE COURT: Yeah, but how burdensome -- I don't --  
23 you haven't told me, I don't think, how burdensome it is. I  
24 don't know how many -- the way you just described it sounds  
25 logical to me, that they have a quality assurance guy come in

1 at some -- maybe every day, maybe once a month, maybe every  
2 run, I don't know, but whatever they do they do and -- and  
3 they test it and then they put the test results in the file.  
4 Right?

5 MR. DE LA GARZA: Right.

6 THE COURT: And maybe it only tests for color,  
7 smell, degree of formaldehyde, whatever. And it -- but it  
8 says nothing about disease causing, because that's not what  
9 they're testing it for.

10 MR. DE LA GARZA: Correct.

11 THE COURT: Okay. First of all, just so that  
12 counsel has done his job and we don't have a problem later on,  
13 why would you not produce at least a sampling of those to show  
14 this is what we do on a regular basis? And maybe do one from  
15 every decade or something. Or --

16 MR. DE LA GARZA: I wouldn't have a problem with  
17 producing a sample of a test so that counsel could see what  
18 are we testing.

19 THE COURT: And --

20 MR. DE LA GARZA: And I don't speak for all of the  
21 defendants, but that -- that is --

22 THE COURT: But we also want to make sure, --

23 MR. DE LA GARZA: -- more -- less burdensome.

24 THE COURT: -- because we're talking about a long --  
25 talking about a long period and we want to make sure that



1 whenever the type of testing changed, you're getting a sample  
2 of the new test.

3 MR. DE LA GARZA: Right.

4 MR. WARNER: So -- oh, I'm sorry.

5 THE COURT: Just let me finish.

6 MR. WARNER: Forgive me. Forgive me. I'm sorry.

7 THE COURT: Okay. So, that's -- it's more of a take  
8 it out of the case thing than it is giving them ammunition.

9 MR. DE LA GARZA: So, what I think we're talking  
10 about is an example of a test during the time period defined  
11 by the lawsuit, and to the extent that the test changed, then  
12 an example of the next test.

13 THE COURT: Right.

14 MR. DE LA GARZA: If the format changed or the  
15 actual test changed, --

16 THE COURT: Mm-hmm.

17 MR. DE LA GARZA: -- then we give them an example of  
18 that one. So, example for -- of each test that would have  
19 been performed, each inspection that would have been  
20 performed.

21 THE COURT: Yes.

22 MR. DE LA GARZA: So he could decide do I want more.

23 THE COURT: Exactly. I'm not --

24 MR. DE LA GARZA: Fair?

25 THE COURT: -- foreclosing your right to say this is

1 going to take us down a path to now right to the heart of the  
2 lawsuit.

3 MR. WARNER: And -- and I -- and I -- and that's  
4 fair, Your Honor, and I -- I -- I would only say if -- if the  
5 discovery had been responded to under the objection, then we --  
6 we probably wouldn't even be here right now saying that, you  
7 know, --

8 THE COURT: All right. Well, you're here.

9 MR. WARNER: But -- but that -- but that -- but, you  
10 know, actually, though color and smell, you know, sometimes  
11 she didn't take her (indiscernible), sometimes it was already  
12 in the machine, and it could have been a certain shade of red  
13 and that's how she may have identified a certain product. I  
14 mean, you know, so stuff -- stuff -- stuff like that is  
15 certainly relevant, as well, but --

16 THE COURT: All right. I'm not say --

17 MR. WARNER: -- you know, --

18 THE COURT: -- but you're going to get that under  
19 any -- you're going to get that.

20 What's the next area? And by the way, you said  
21 something that we didn't addressed. You talked about  
22 processes. And I don't know why that's relevant, so I'm going  
23 to say no to the processes. Until you tell me why you need to  
24 know exactly how they make their product. You're going to  
25 know what is in their product, you're going to know what

1 testing -- they performed on the product. You're going to get  
2 certain marketing materials on the product. You're going to  
3 get the catalogs. I don't know why the processes are  
4 relevant.

5 MR. WARNER: Well, the -- well, let's -- let's say  
6 did their workman's comp insurance come in and say these  
7 people are working with formaldehyde, make them wear the --  
8 make them wear the cartridge respirators. That goes to  
9 process.

10 THE COURT: Well, yeah, but that's totally  
11 different. I don't know enough about this, but speculating,  
12 raw formaldehyde here, product over here. I could see why a  
13 guy handling it over here might need more than your client  
14 over here.

15 MR. WARNER: Well, I mean, I think that if you -- if  
16 you have a plant that has a vat of raw formaldehyde that's  
17 being poured into other substances, then that -- then I --

18 THE COURT: That may very well be dangerous, --

19 MR. WARNER: I -- I -- I --

20 THE COURT: -- but that's not your case.

21 MR. WARNER: Well, exactly, but if we knew, for  
22 example, that, you know, this -- that -- that one defendant  
23 had -- required all of its employees to don a cartridge vest --  
24 respirator before going to the assembly line, well, then we  
25 would say, well, heck, why the heck didn't it say in your

1 material safety data sheet that they should have done that,  
2 too?

3 THE COURT: Because it might be totally different at  
4 the other end of the assembly line. I don't --

5 MR. WARNER: Well, you're -- I think what Your Honor  
6 is saying, that an embalming room might be different than an  
7 assembly line may in a --

8 THE COURT: Yeah.

9 MR. WARNER: -- in a factory.

10 THE COURT: Yeah.

11 MR. WARNER: Well, that may be so, but we're --  
12 we're never going to know though unless we know what the  
13 process is.

14 THE COURT: Well, you can think about this one and --  
15 and I understand where you're going. Right now, I am not  
16 seeing it. You've got to give me a little bit more on the  
17 connection between protecting the worker in the factory  
18 handling raw -- I'm assuming raw formaldehyde, whatever that  
19 means; I'm just making that up -- with an embalming product  
20 that they have a responsibility to make sure can be used  
21 safety under FDA reg -- is it FDA?

22 MR. WARNER: F -- it's everything, Your Honor.  
23 EPA, FDA, all -- it -- I mean, it --

24 THE COURT: Under government supervision.

25 MR. WARNER: Well, so -- so that's why we -- we

1 would need to know the -- the parts per million in the factory  
2 and then the -- we can compare it with the parts per million  
3 in the embalming room.

4 THE COURT: I -- but only if you're going to -- if  
5 you're representing a worker who has come down with cancer in  
6 the factory.

7 MR. WARNER: Yes, but except for the -- well, let's  
8 say the parts per million is equal or even less than the parts  
9 per million in the -- in the embalming room and everyone on  
10 the assembly line has a cartridge respirator, but nothing in  
11 the warning label or the MSDS says you've better put on a  
12 cartridge respirator. I think a jury would -- should hear  
13 that.

14 THE COURT: We're going to say no for now. I need  
15 more information after you've gotten everything that you've  
16 got.

17 MR. WARNER: Can I at least have the parts per  
18 million at least in the factory? Because I think that would  
19 at least --

20 THE COURT: Can you have what? I'm sorry?

21 MR. WARNER: Can I have the parts per million in the  
22 factory that -- because, I mean, these are things that we've  
23 been asking for and they all -- they all sort of meld  
24 together. They -- they -- they're all -- I --

25 THE COURT: Why can't you give him the parts per

1 million in the factory --

2 MR. WARNER: I --

3 THE COURT: -- or whatever that means? I --

4 MR. WARNER: Well, parts per million in the -- in  
5 the air.

6 THE COURT: I know what you mean. I didn't mean  
7 what you mean. I wasn't --

8 MR. WARNER: Having the --

9 THE COURT: I wasn't trying to be snotty about the  
10 way you said it, I'm just -- it hasn't been scientifically  
11 defined to me yet.

12 MR. DE LA GARZA: I think counsel is creating a  
13 scenario, in order to defend his request, that doesn't exist.  
14 There is no measurement in the factory of parts per million,  
15 for example, in the air. That's just not being measured.

16 And I am going to make an assumption here that there  
17 is some sort of respirator or there's some sort of clothing  
18 and all that that's used in the factory. And I do agree with  
19 the -- the proposition that what happens in the factory is not  
20 the same setting as what happens over in the embalming room.  
21 You're using one small container of the fluid, as opposed to  
22 maybe being standing next to a vat of the same stuff.

23 And so, unless some scientist says that there is  
24 some direct correlation between the experience of the worker  
25 in the factory and the experience of the embalmer, I don't see

1     how -- how that could ever be relevant, could -- and could  
2     ever turn into anything relevant.

3             THE COURT: Yeah, where -- you're trying to make  
4     this case too big. This is a case about what happened to your  
5     client after being exposed to these products over a period of  
6     time and that's -- and that's what's in this case. But to try  
7     to go back and find out how dangerous it may or may not have  
8     been in the factory and what precautions they took in the  
9     factory is -- is I think relevant in a very esoteric sense of  
10    the word.

11            MR. WARNER: May -- may -- may I just respond?

12            THE COURT: Yep.

13            MR. WARNER: To my adversary?

14            So, it -- it's not just one bottle, you're actually  
15    taking the blood out of somebody, which is a lot, and putting  
16    it -- and replacing it with fluid and it's -- it's a -- a  
17    factory presumably is a much -- is a large facility with open  
18    air, whereas an embalming room -- and we've all visited them --  
19    is -- is probably the size of Your Honor's chambers.

20            So, I -- I -- again, I would --

21            THE COURT: So, they're not the same.

22            MR. WARNER: Well, they're not -- well, very, very  
23    few things are exactly the same in our line of work, Your  
24    Honor, respectfully, but I -- I just think that I -- I think  
25    this was a request that we succeeded on in state court, simply

1 because if -- you know, if -- if what's good for the goose is  
2 good for the gander. If -- if you -- if you -- if you're  
3 trying to avoid workers' comp suits, because you want your  
4 worker being -- you know, you -- you don't want to get sued,  
5 you know, you -- you don't want -- you want to make sure your  
6 worker -- there's worker safety and O -- when OSHA slips by,  
7 you don't get fined, and -- and there's nothing in your MSDSes  
8 that says otherwise, then I -- I -- I think what's good for  
9 the goose is good for the gander.

10 MR. DE LA GARZA: I don't even really --

11 THE COURT: Give me one second. Please.

12 MR. DE LA GARZA: -- know how to respond to that.

13 THE COURT: Give me one second.

14 (Extended pause)

15 THE COURT: All right. Go ahead.

16 MR. DE LA GARZA: Well, I was simply saying, Your  
17 Honor, I don't really understand what counsel was just saying.  
18 I don't really understand his argument. I think that we've  
19 already made the point these are totally disparate situations.  
20 There's -- there's just simply no relevance to it.

21 Counsel keeps on making references to the MSDSes and  
22 they should make disclosure that you need protective  
23 equipment. Well, the reality is they do. That's not being  
24 raised here. And, you know, at some point we'll probably have  
25 the proper setting to show you all the MSDSes, to show you the



1 labels. And we also don't have the benefit of presenting to  
2 you the testimony of Patricia O'Connor with regard to the fact  
3 that she did use protective equipment and protective clothing.

4 So, you know, we're -- I think we're getting way  
5 ahead of ourselves in discovery.

6 THE COURT: I don't think you briefed this issue.

7 MR. WARNER: Well, --

8 THE COURT: And that's why I stopped for a minute,  
9 to go back and look at your letter.

10 MR. WARNER: I -- I -- I think -- I think what --  
11 what -- in our -- well, first -- first of all, the protective  
12 equipment changed dramatically since 1990 when Patricia  
13 O'Connor started working.

14 In our -- in our letter, Mr. Tandy -- you know, I'm  
15 not -- I'm not jumping on him, but he -- I -- I -- and I --  
16 actually, he and I both worked on it. Basically, what we're  
17 saying is process is process. Process is -- or, you know,  
18 maybe we should have said process -- maybe we could have been  
19 more specific, but, frankly, I mean, you know, we just -- we  
20 just figured that, you know, these are -- these are defendants  
21 that represent sophisticated enough clients as to certain --  
22 certainly -- certainly these things should simply just be  
23 implied.

24 I mean, I -- I -- I don't -- not -- not -- very  
25 rarely is anything in our profession the same. We're lucking

1 if it's similar. And in this case, if we have -- if we have a  
2 factory owner who goes, oh my god, what if OSHA comes by and  
3 I'm not -- I'm -- and I'm -- you know, and I'm -- and I'm --  
4 I'm done -- I'm done with, or if my own -- my -- my workers'  
5 comp insurer stops by, I'm done with, I mean, everyone better  
6 put on your -- your -- your respirators, you know, and -- and  
7 -- and it --

8 And, again, this changed dramatically over the past  
9 several decades. When Patricia O'Connor started, I think they  
10 were lucky if they -- if they wore surgical masks. And -- and  
11 these are things I learned from toxicologist in my last suit.  
12 It's -- it's --

13 THE COURT: Well, that -- it -- you know, that's  
14 going to depend on whether or what the state of the art and  
15 the knowledge was at the time.

16 MR. WARNER: Well, and how are we going to know that  
17 though unless, you know, we know what their process --

18 THE COURT: Well, you're going to get everything to  
19 tell you what it was for that. You're arguing now that you --  
20 that they have to open up their factory floor to you --

21 MR. WARNER: Well, --

22 THE COURT: -- and I --

23 MR. WARNER: I have no desire to go there, I mean, --

24 THE COURT: No. All I'm saying is right now I am  
25 not seeing that relevance, nor do I think that -- and I want

1 you to understand what I am saying here. I am not shutting  
2 this down forever and for all time.

3 MR. WARNER: Uh-huh.

4 THE COURT: I am not denying it with prejudice.

5 MR. WARNER: Sure.

6 THE COURT: But I am denying it today and I -- and  
7 that's why I went back and looked at your letter. I don't  
8 think you've really argued this why you need to go that far  
9 that way.

10 MR. WARNER: I -- I just -- and well, I -- I suppose  
11 I don't think we -- we expected this much resistance. Again,  
12 I -- I mean, you know, these are -- these -- you know, Ms.  
13 Weisslitz knows, she's represented a lot of the toxic  
14 companies, and I -- I -- we -- we -- we --

15 THE COURT: And this is something you always get?

16 MR. WARNER: -- we -- we -- we --

17 THE COURT: You always get the --

18 MR. WARNER: No.

19 THE COURT: -- the processes and the manufacturing?

20 MR. WARNER: We got it last time, yeah. I mean, I --  
21 if my recollection serves me correctly, I think we got  
22 everything from OSHA, we got OSHA testing, we got -- I mean,  
23 good lord, we got quality air sampling in the company, oh,  
24 they've -- you know, they've -- they were sure to do that.  
25 Because qual -- and I -- again, if we want to wait for

1 toxicologist, that's fine, but nowadays --

2 THE COURT: How did you get it from OSHA?

3 MR. WARNER: I'm sorry?

4 THE COURT: Did you -- how did you -- last time,  
5 wherever that was, how did you get it from OSHA?

6 MR. WARNER: I don't think even it was a motion or  
7 anything, was it?

8 THE COURT: No. Did you subpoena it from OSHA or  
9 did you get it from --

10 MR. WARNER: Oh, oh, it was -- it was --

11 THE COURT: -- your defendants in --

12 MR. WARNER: -- it was a FOIA. It was a FOIA  
13 request.

14 THE COURT: Okay. Well, why don't you do that?

15 MR. WARNER: Well -- well, because I -- well, --  
16 well, so let me -- let me back up a little bit. OSHA only has  
17 things when there's a problem. OSHA requires certain testing,  
18 nevertheless even when there's not a problem.

19 THE COURT: Right.

20 MR. WARNER: OSHA requires testing in factories.  
21 OSHA requires testing in embalming rooms. OSHA requires all  
22 sorts of crazy stuff now and --

23 THE COURT: Okay.

24 MR. WARNER: -- and it changed all over the decades.  
25 And -- and I guess I -- I just thought -- I just saw -- and --

1 and I'm -- and please forgive me, guys, I am not trying -- I  
2 just thought a lot of this was implied, that's what -- but --  
3 but let me be more specific. That's fine. I mean, we'll make  
4 it more specific. That's -- we'll -- we'll per --

5 THE COURT: Either --

6 MR. WARNER: -- we'll confer.

7 THE COURT: -- make it more specific --

8 MR. WARNER: Yeah.

9 THE COURT: -- and/or --

10 MR. WARNER: Yeah.

11 THE COURT: -- brief it more specifically --

12 MR. WARNER: Okay. Okay.

13 THE COURT: -- and/or go to -- get a FOIA request  
14 from OSHA.

15 MR. WARNER: But -- but again but the only --

16 THE COURT: Send out a FOIA -- send out a FOIA --

17 MR. WARNER: -- the only problem with that though is  
18 that the -- you know, you only get them when there's a  
19 problem. So, maybe in 1997, you know, a vat spilled and they  
20 were --

21 THE COURT: Well, before we go down that road, be  
22 more specific in this --

23 MR. WARNER: Okay.

24 THE COURT: -- particular request. Okay?

25 MR. WARNER: You got it. Yeah. Thank you.

1           THE COURT: I need you to make a more coherent  
2 connection.

3           MR. WARNER: Understood, Your Honor. Well, you mean  
4 -- you mean briefing to Your Honor or --

5           THE COURT: Yes. Well, see if you can work it out.

6           MR. WARNER: Okay. Okay.

7           THE COURT: But if not, --

8           MR. WARNER: Okay.

9           THE COURT: -- if you can't work it out, I'm --  
10 before I was saying --

11          MR. WARNER: Okay.

12          THE COURT: -- simply saying you need to meet and  
13 confer and I know you're going to be successful. On this one,  
14 meet and confer, but if you're not successful right away, send  
15 me a more detailed letter --

16          MR. WARNER: Understood, Your Honor.

17          THE COURT: -- as to why this is relevant to your  
18 claims and defense -- your claims in this lawsuit or their  
19 defenses.

20          MR. WARNER: Absolutely.

21          THE COURT: Okay. Next?

22          MR. DE LA GARZA: We have one more area, Your Honor,  
23 but I did hear counsel in that prior discussion make a  
24 reference to EU regulations, you know, Canadian regulations.  
25 Well, we're in the United States. This is in New Jersey. We

1 certainly want to make sure that we're not required to produce  
2 any documents that are outside of the United States.

3 I've had -- we didn't even know we had an issue  
4 about that until I heard all of this discussion of EU and  
5 Canada, because it's not in any discussion we've had up to  
6 this point.

7 THE COURT: Mm-hmm.

8 MR. DE LA GARZA: So, all right. The next area is  
9 there are requests for us to provide what we consider to be  
10 attorney work product, pure litigation related files --

11 THE COURT: All litigation files, number 15?

12 MR. DE LA GARZA: -- relating to other matters. And  
13 so the first one though, it's in request number 12. They ask  
14 for each and every law which governs any aspect of the chain  
15 of distribution of the products the subject of this  
16 litigation. So, they want us to -- to make copies of the laws  
17 that we think are relevant to the chain of distribution. Our  
18 client is not going to have that. That would be something  
19 that either they receive from a lawyer -- there are no -- we're  
20 -- we're not legal firms, we're chemical manufacturers, and so  
21 it's either going to come from a lawyer, which is attorney-  
22 client privilege, or it's going to ask us to make that  
23 decision of what is that applicable law related to the chain  
24 of distribution.

25 There is no need for this and, frankly, that's just

1 all attorney work product. So, that was number 12.

2 Number 15 asks for litigation files related to other  
3 lawsuits since 1990. And that would be attorney work product,  
4 as well, and frankly not relevant. This case is not going to  
5 be decided based upon how another case went. That's a pure  
6 fishing expedition.

7 And then number 16 asks for documents that refer to  
8 complaints about products -- so, number 16. Every document  
9 that refers to a complaint concerning the products in  
10 litigation. Okay. Well, that's not narrowly constrained to  
11 the facts of this case. If, for example, somebody sent us a  
12 complaint and said the box was damaged or this gives me the  
13 wrong color, it's not the rosy pink that you advertised, it's  
14 the red rose and I can't sell that, that's just not cons --  
15 narrowly tailored to the needs of this case.

16 So, those are -- that's the next category, 12, 15  
17 and 16.

18 THE COURT: All right. Number -- let's go in  
19 reverse order.

20 MR. WARNER: And may I?

21 THE COURT: Sure.

22 MR. WARNER: Okay. Well, again, I thought this was  
23 implied. I mean, if they had just simply answered under an  
24 objection we're not going to give you complaints about a torn  
25 box, that would be perfectly acceptable. But if somebody



1 writes back and says, you know, I -- I got a severe skin  
2 irritation or, you know, and for all -- you know, look.

3 THE COURT: Let's start this way.

4 MR. WARNER: Mm-hmm.

5 THE COURT: They'll give you all complaints -- and  
6 we'll talk about what that means in a minute -- all complaints  
7 about cancer or leukemia.

8 MR. WARNER: Fair enough, Your Honor.

9 THE COURT: Now, what do you mean by complaints?

10 MR. WARNER: Well, I --

11 THE COURT: Because here's the thing. I don't know  
12 -- and I don't know if you've -- I'm sure you do know,  
13 actually, the answer to this question -- is how your clients  
14 record consumer complaints, whether they record them. I mean,  
15 I'm sure they do. How and how voluminous they are. Whether  
16 they can be broken down by cancer slash leukemia. And that's  
17 one form of complaint, and then the other are litigations.

18 MR. WARNER: Right. I --

19 THE COURT: I mean, that you should have a record  
20 of. How many times you've been sued by any consumer or  
21 anybody where the allegation is that your products cause  
22 cancer or leukemia. I know cancer is a little broader, but  
23 I'm going to go there.

24 MR. WARNER: I -- I -- and I don't want -- I don't  
25 want their work products, Your Honor. I don't want their

1 memoranda about, you know, how -- you know, how --

2 THE COURT: No, well, okay, but let's just do one  
3 thing at a time.

4 MR. WARNER: Okay. Oh, --

5 MS. WEISSLITZ: Your Honor, I just want to make  
6 clear that we're talking about embalming fluids. These are  
7 not products that are marketed or used by --

8 THE COURT: No, I know that.

9 MS. WEISSLITZ: -- everyday consumers.

10 THE COURT: When I use the word consumer, I mean  
11 somebody who bought your marketing product.

12 MS. WEISSLITZ: Yeah, and there -- and there's not --

13 THE COURT: I mean, not marketing product, --

14 MS. WEISSLITZ: -- and there's not, like, --

15 THE COURT: -- your embalming product.

16 MS. WEISSLITZ: -- a hotline where people call up  
17 and say, --

18 THE COURT: Well, I didn't know if there was or  
19 there wasn't.

20 MS. WEISSLITZ: Well, I can speak for my client that  
21 there's not.

22 THE COURT: Okay.

23 MS. WEISSLITZ: And so we have no problem disclosing  
24 prior litigations. I believe, at least for my client, Mr.  
25 Tandy and Mr. Warner have that information, so --

1 THE COURT: Okay.

2 MR. WARNER: Well, again, Ms. -- Ms. Weisslitz  
3 (indiscernible) the Website, the address, I mean, you know, --

4 THE COURT: Hmm? What?

5 MR. WARNER: -- they -- they have a -- they have a  
6 Website. I believe their Website allows the people to --

7 THE COURT: Well, I'm not going to argue that now.  
8 I want you to make -- answer the question as to how your  
9 client logs in -- if -- whether and how they log in complaints  
10 about products. If they have no complaints or no place where  
11 they've kept them, then you can answer that. If they've -- if  
12 there are -- if --

13 MS. WEISSLITZ: Okay.

14 THE COURT: If it turns out to be a burdensomeness  
15 issue, then you'll let me know. Otherwise, I think it's  
16 relevant.

17 MS. WEISSLITZ: Okay.

18 MR. DE LA GARZA: So, if there's a -- if there is a  
19 complaint or -- that is non-litigation, we give the complaint,  
20 whatever -- the letter or whatever it is, the email, Website.  
21 Or if there's litigation, we give them the complaint, the  
22 actual petition complaint and we start there.

23 THE COURT: Right. We start there. You'll review  
24 that stuff and then, if you want follow up, we'll -- you could  
25 talk to them. And if I have to get involved, I will.

## Colloquy

60

1 MR. WARNER: Yeah. And -- and look, if -- if  
2 there's something that's -- that -- that was on PACER or  
3 something, then I don't need them to print all that stuff out  
4 for me. And then, as --

5 THE COURT: Well, you'll just -- you know, just give  
6 me -- you hear that.

7 MR. WARNER: Yeah. Yeah, I mean, you know, --

8 THE COURT: You don't need to print every complaint  
9 out, just give them the information.

10 MR. WARNER: Right. And -- and I --

11 THE COURT: All right.

12 MR. WARNER: -- and I -- I -- it --

13 THE COURT: Complete litigation files. All right.  
14 I tend -- well, you don't really want complete litigation  
15 files.

16 MR. WARNER: Fair -- fair enough. I --

17 THE COURT: And then number 12. Well, this  
18 question, Mr. de la Garza edited it when he read it. And I  
19 thought his edit -- his edit made some sense, but that's --  
20 really, it asks for all -- it's too broad and too convoluted  
21 and it asks for too many things in one question.

22 MR. WARNER: So, I -- I -- I pulled it from -- I --  
23 well, I sort of paraphrased it from the New Jersey form --  
24 what was it? C or A interrogatories that asked violation of  
25 any and all laws, statutes, regulations.

1 THE COURT: Mm-hmm.

2 MR. WARNER: I don't think it's unfair to say --  
3 well, laws -- well, you know, --

4 THE COURT: Each and every law --

5 MR. WARNER: Or -- or -- or what -- what -- what law  
6 are you subject to what -- per regulation. I -- I don't think  
7 that's necessarily unfair to say who are your regulators, who  
8 are your overseers, what do they require of you.

9 MR. DE LA GARZA: Your Honor, this is not an  
10 interrogatory. This is a request for documents. So, the only  
11 way we're -- we would be able to do that would be, as lawyers,  
12 we would have to go through that exercise, if required to,  
13 print out a law. That just --

14 MR. WARNER: I -- I would --

15 MR. DE LA GARZA: And that would be totally attorney  
16 work product, --

17 MR. WARNER: I would --

18 MR. DE LA GARZA: -- because we're now having to say  
19 what we think --

20 THE COURT: Well, I don't want to raise an issue  
21 that you guys haven't argued about yet here, but the bottom  
22 half of the question says "and which was established,  
23 published or promulgated by any professional association,  
24 trade association, industry association, or private group."

25 MR. WARNER: I -- I think the one above that talks

1 about regulators. I think there's another one that talks  
2 about regulators. I think --

3 THE COURT: No, the same -- it's in the same  
4 question.

5 MR. WARNER: Oh, it is? Okay. Well, let's -- I  
6 mean, we're -- we're asking who are your overseers and what do  
7 they require of you and I -- I look at the -- and I -- I -- if  
8 the -- if he wants to make a list instead of printing them  
9 out, that's fine, too. I -- you know, I -- I -- I don't want  
10 -- so, I don't think that hitting print is necessarily  
11 creating attorney work product, but I'm --

12 THE COURT: I'm not sure why you're asking this  
13 question.

14 MR. WARNER: Well, I -- again, I -- I -- I --

15 THE COURT: If I understand what you're asking, you  
16 should know the answer. Now, I know that's not an appropriate  
17 response to a discovery question that you -- that you know it  
18 doesn't mean you can't ask it, but this is not something  
19 that's in dispute.

20 MR. WARNER: In

21 THE COURT: Who the -- who regulates them? It's not  
22 like you're going to get a different answer than you would  
23 have expected.

24 MR. WARNER: Well, so, --

25 THE COURT: Right?

1 MR. WARNER: Well, not necess --

2 THE COURT: Am I right about that?

3 MR. WARNER: I'm not sure, Your Honor, because, you  
4 know, again, the -- these -- I know, for example, Dodge sells  
5 internationally and we -- we -- we'd like to know, you know,  
6 maybe they -- maybe they take different -- maybe they make  
7 their products safer abroad than they do here. And we would  
8 like to know --

9 THE COURT: They may. They may.

10 MR. WARNER: -- what regulations they follow -- they  
11 -- they follow. I mean, and I -- I can figure -- I'll -- you  
12 know, we'll -- we'll -- we'll synthesize all that information  
13 once we get it. We'd just like to know, you know, what -- you  
14 know, for example, maybe they belong to the --

15 THE COURT: Well, let's --

16 MR. WARNER: -- formaldehyde --

17 THE COURT: Let's take it one step at a time. What  
18 governmental entity regulates them. You want to know that.

19 MR. WARNER: Well, --

20 THE COURT: Even though I think you probably know,  
21 at least for the United States.

22 MR. WARNER: Right. Sure. And -- and abroad, yeah.

23 THE COURT: So, you want to know internat --  
24 everywhere they do business, what governmental entity  
25 regulates them. That's number one; right?

1 MR. WARNER: Yes. Correct.

2 THE COURT: And you then you want to know, aside  
3 from governmental entities, whether they are regulated --  
4 let's -- I'm going to just for purposes of my understanding --  
5 whether they're self-regulated by a professional organization  
6 or association.

7 MR. WARNER: Correct.

8 THE COURT: Okay.

9 MR. WARNER: And for all I know, there's something  
10 I'm completely unaware of, like the International Organization  
11 of Formaldehyde Manufacturers, that says, well, you -- you  
12 know, that -- that said in 1988, oh boy, this stuff is really  
13 starting to get, you know, looked at closely, we better look  
14 into safer ways of --

15 THE COURT: Well, it does sound more like an  
16 interrogatory than a document demand.

17 MR. WARNER: Well, it does -- it doesn't have to be.  
18 He could print it out and I don't think hitting print is --

19 THE COURT: What are they going to print out?

20 MR. WARNER: -- is making it attorney work product.

21 THE COURT: What are they -- there is -- I am --  
22 what are you asking them to print out? Like, it's -- that's  
23 an interrogatory question. Who -- to whom do you answer?

24 MR. WARNER: Mm-hmm. Right. Right.

25 THE COURT: To whom are you regulate -- who are you



1 -- who regulates you.

2 MR. WARNER: Mm-hmm.

3 THE COURT: Governmental -- that's an interrogatory  
4 question. I don't think there's a button somebody pushes  
5 somewhere to say here's all our regulators, you have it right  
6 here.

7 MR. WARNER: Well, but I -- but I think --

8 THE COURT: Or maybe they do.

9 MR. WARNER: Well, I -- I -- I think -- fair enough.  
10 I know -- but I think it could be -- I think they could --  
11 they could print out -- and I'm not -- I don't necessarily --  
12 I wouldn't require that. I don't think hitting print is  
13 creating attorney work product, but I -- I -- I think that it  
14 could be --

15 THE COURT: Well, --

16 MR. WARNER: -- a document demand and we're saying,  
17 well, what regulations, what -- what -- do you adhere to, what  
18 -- what -- perhaps not maybe legally binding, --

19 THE COURT: Again, those are --

20 MR. WARNER: -- but what standards.

21 THE COURT: Those are deposition -- I mean  
22 interrogatory questions.

23 I'm not going to make them answer that question.  
24 You -- if you can ask it in an interrogatory or in a  
25 deposition perhaps --

1 MR. WARNER: Okay.

2 THE COURT: -- when you get a 30(b)(6) witness or  
3 something. I mean, I -- I am not telling you that I don't  
4 think it would lead -- although this is not the standard  
5 anymore -- to admissible evidence. It may -- it may lead to  
6 relevant evidence in this case. Maybe. I get it. I  
7 understand how I think you would want to use it, depending on  
8 what the answer is. But let's just ask it in a more --

9 MR. WARNER: And --

10 THE COURT: -- in a better way.

11 MR. WARNER: And just may I just say one more thing,  
12 Your Honor? That -- that -- that I don't know -- that -- that  
13 I've deposed enough of these embalming man -- company  
14 manufacturers and we have had CEOs know that when I get there,  
15 the answer is going to be "I don't know." Which is why --

16 THE COURT: Well, you've got to put -- well, if  
17 you're going to do a 30(b)(6) deposition, make sure that you  
18 put that as one of your topics.

19 MR. WARNER: Okay.

20 THE COURT: Who it regulates. It's a very simple --  
21 that's very simple.

22 MR. WARNER: No, no, I -- right and, well, --

23 THE COURT: And I think they have probably somebody --

24 MR. WARNER: Well -- well, the -- the -- also -- I'm  
25 sorry. I didn't mean to interrupt, Your Honor. I was -- I

1 was just -- I was just going to say, you know, the -- well, I  
2 don't know who -- who in the EU does it, or I don't know who  
3 in Canada does it, I don't know what regulations we're  
4 supposed to follow in Canada, I just -- I just -- I'm just Jim  
5 Jones from Texas, I -- you know, I just make formaldehyde.  
6 You know, that's the answer I get routinely.

7 THE COURT: Well, you're -- then you haven't given  
8 them a proper 30(b)(6) notice.

9 MR. WARNER: Okay.

10 THE COURT: Or, if you have, they're violating the  
11 hell out of it.

12 MR. WARNER: Okay. Fair enough, Your Honor. Fair  
13 enough. Fair enough.

14 MR. DE LA GARZA: We do have one remaining demand  
15 and that was document demand number 2. Document demand number  
16 2 asks for documents related to possible alternative  
17 recommended or foreseeable uses of our products. So, --

18 THE COURT: Oh, yeah.

19 MR. DE LA GARZA: So, that's like saying what else  
20 could you do with this stuff?

21 THE COURT: I don't like that one at all.

22 MR. WARNER: Okay.

23 THE COURT: That's out.

24 MR. WARNER: Okay.

25 (Extended pause)

1           THE COURT: Now, we started talking about the fact  
2 that your client is sick. And if I didn't make it clear,  
3 you've got your six weeks, you've got your four weeks. But  
4 how long will you need thereafter -- well, I guess it's you,  
5 really -- to get ready to depose his client?

6           MS. WEISSLITZ: After the four weeks?

7           THE COURT: Well, just say from today. I mean, just  
8 step back for a minute and think about what you need to get  
9 there, because if she's getting sicker, we probably need to do  
10 something.

11          MR. DE LA GARZA: So, we have more needs than just  
12 how do we dovetail the discovery from this one defendant with  
13 this plaintiff over here.

14          THE COURT: Mm-hmm.

15          MR. DE LA GARZA: The plaintiff has not responded to  
16 our discovery. I mean, just nothing. There's no letter to  
17 the Court, --

18          THE COURT: Okay.

19          MR. DE LA GARZA: -- there's no discovery response.  
20 So, that -- that's another issue that we're going to confer  
21 with counsel about, like, when are you going to respond to our  
22 discovery, because --

23          THE COURT: Right.

24          MR. DE LA GARZA: -- not that sets us back. So, now  
25 we've -- but now we have this issue where we may need to take

1 -- we need -- may need to get discovery from the plaintiff and  
2 take the deposition of the plaintiff, to the extent that the  
3 plaintiff's condition might be worsening.

4 And, you know, there are other issues involved here.  
5 Apparently, she's -- she has another malpractice against  
6 somebody for mistreating her for this illness and -- and that  
7 -- we really need to get the records to see how do we separate  
8 out what you're saying we did with what somebody else did.  
9 So, the discovery is now becoming even more paramount, given  
10 that we have this deteriorating condition of the plaintiff.  
11 That is now going to impact other dates in the scheduling  
12 order.

13 And so, if I may suggest this? I think maybe the  
14 best approach is that we need to confer and talk about what is  
15 a realistic plan here. We don't know what it is. And I don't  
16 believe that counsel here knows what it is, because I don't  
17 think counsel knows exactly what her condition is. He's got a  
18 report from Mr. Tandy, but we really need to talk to Mr. Tandy,  
19 who needs to get a good understanding of what's his client  
20 capable of doing and when are they going to get us our  
21 discovery.

22 THE COURT: Well, --

23 MR. DE LA GARZA: So, what I'd suggest that we do is  
24 that we report back to you and tell you whether we think that  
25 the scheduling order needs to be changed so that we can get a

1 plan that actually works for everybody.

2 MR. WARNER: And -- and I do apologize. We -- we  
3 have been sifting through -- I -- I think that we've -- we've  
4 gone through at least 6,000 pages of medical records already  
5 and now we're just getting more and more. And if -- and --  
6 and we -- I mean, in all sincerity, I mean, we are apologetic  
7 about that, but we would ask --

8 THE COURT: You start to roll them out, I think.

9 MR. WARNER: I'm sorry?

10 THE COURT: Start to roll out those records. You  
11 know, you could -- what you've gone through, get in their  
12 hands and but tell them that there's more to come. It's a  
13 rolling production.

14 MR. WARNER: Okay.

15 THE COURT: That's number one. Number two, you  
16 agree you should meet and confer --

17 MR. WARNER: Absolutely.

18 THE COURT: -- so you can get a handle on how far --  
19 really what it's going to take for you to get there. And then  
20 start to -- find out exactly the -- how your client is doing.

21 MR. WARNER: And -- and Your --

22 THE COURT: And then maybe -- it may be that they  
23 are going to want to take a *de bene esse* deposition and you're  
24 not going to be ready, I would obviously give you the right to  
25 come back later, assuming that's a viable right, to do a

1 discovery deposition or to do it at the same time, but to  
2 continue it later after all the -- that -- that may or may not  
3 help us. I am just -- you know what? You guys meet and  
4 confer.

5 MR. WARNER: We -- we -- we will need the four  
6 weeks, though, to complete our -- at least our initial roll  
7 out there, Your Honor.

8 THE COURT: You should meet and confer ASAP about  
9 this whole schedule. Okay?

10 MR. WARNER: Okay.

11 THE COURT: I'm here when you're ready.

12 MR. WARNER: Okay.

13 MR. DE LA GARZA: Okay.

14 MS. WEISSLITZ: Okay.

15 THE COURT: All right?

16 MR. DINO: May I ask a question?

17 THE COURT: Mm-hmm.

18 MR. DINO: Counsel had --

19 THE COURT: No. Go ahead.

20 MR. DINO: Counsel referred to several times about  
21 regulation and such in the EU and Canada. I was just  
22 wondering the Court's position on whether -- how it feels  
23 about defendants' (indiscernible) information.

24 THE COURT: I really don't like to do what I am  
25 about to do, but I am not going to tell you, because I don't

1 know yet, because I think counsel again mentioned this is the  
2 first time he's hearing about it and it hasn't been briefed.

3 Off the top of my head, I see pros and cons. I  
4 don't know -- I think, if you can't work that out, I think he  
5 has to put it in front of me pretty quickly.

6 MR. DINO: That's fine. I just wanted to lodge my  
7 objection so that there was no argument that it was made.

8 MR. WARNER: Your Honor, can we just at least be  
9 rest assured that we -- we have four weeks to complete our  
10 initial roll out of --

11 THE COURT: Yeah. Yeah.

12 MR. WARNER: Thank you. Thank you.

13 THE COURT: I -- yeah. I -- I said that. You have  
14 the four weeks, --

15 MR. WARNER: Okay.

16 THE COURT: -- and when you say complete it, I just  
17 wanted you to get it started.

18 MR. WARNER: Yeah.

19 THE COURT: You know, and because the way I  
20 understood it, --

21 MR. WARNER: Well, --

22 THE COURT: -- you were holding everything and then  
23 you were going to produce it. I think you should start  
24 getting information in their hands.

25 MR. WARNER: No, no, and -- and absolutely, Your



1 Honor. I -- and I -- I -- it just -- regrettably, because  
2 there's so much that needs to be -- well, yeah, well -- well,  
3 I don't need --

4 THE COURT: Well, I -- I --

5 MR. WARNER: -- we -- we don't need to --

6 THE COURT: You don't need to apologize any more.

7 You put that on the record. I got it.

8 MR. WARNER: Okay.

9 THE COURT: Just start getting it out, to the extent  
10 you can.

11 MR. WARNER: Uh-huh.

12 THE COURT: Meet and confer to talk about a whole  
13 schedule and you'll get your stuff done as soon as you can.

14 MS. WEISLITZ: Yes. Yes. Very good.

15 THE COURT: Anything else?

16 MR. DE LA GARZA: No, Your Honor.

17 MR. DINO: No, Your Honor.

18 THE COURT: Okay.

19 MR. WARNER: I --

20 THE COURT: Anything else?

21 MR. WARNER: No, Your Honor.

22 THE COURT: Okay. Thank you.

23 MR. WARNER: Thank you, Your Honor.

24 MS. WEISLITZ: Thank you.

25 MR. DE LA GARZA: Thank you, Your Honor.

1 (Conference concluded at 1:10 p.m.)

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4 C E R T I F I C A T I O N

5 I, TERRY L. DeMARCO, court-approved transcriber,  
6 certify that the foregoing is a correct transcript from the  
7 electronic sound recording of the proceedings in the above-  
8 entitled matter recorded on August 8, 2018 from 12:02:03 p.m.  
9 to 1:10:51 p.m.

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12 08/10/18

13 Date

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**S / Terry L. DeMarco**

Terry L. DeMarco, AD/T 566

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